

ORIGINAL

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December 27 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

MICHAEL G. ALTEROWITZ

December 22, 2010

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

Hon. Mike McGrath
Chief Justice
Montana Supreme Court
Rm. 414, Justice Bldg.
215 N. Sanders
P.O. Box 203001
Helena, MT 59620-3001

***In Re: Proposed Changes to Rules of Professional Conduct -
Limited Scope Representation***

Dear Chief Justice McGrath:

I have practiced law in Montana since 1969. In law school and thereafter when I entered the practice, I was taught and understood that Law was an honorable profession and that, on many bases, it was distinguished from a business. It is the only profession which undertakes to make the courts and the political system just and fair and make sure that everyone follows the rules and can have their "day in court" as needed. Despite a profit motive, I understood that lawyers had unique duties to their clients -- primary among them, the duty of absolute loyalty along with providing competent service. Over the years of my practice, I have had the privilege of serving on the State Bar Ethics Committee. However, I write this comment entirely as an individual attorney and not on behalf of the Ethics Committee.

The Court is now presented with a Petition to amend certain Rules of Professional Conduct to clarify the manner in which attorneys may engage in "limited scope representation" (LSR). To be clear, attorneys in Montana have been allowed to limit the scope of their engagement since 2004 pursuant to M.R.P.C., Rule 1.2(c).

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My understanding is that various well-intentioned groups have worked to put together the proposed "new rules." The primary motivation was to provide legal representation to groups which would otherwise be unable to afford such representation. That need is currently being addressed, in part, by Montana Legal Services, as well as various self-help clinics throughout the state, as well as by individual attorneys offering their services *pro bono*. All of these persons should be commended for their service to the Public. It goes without saying that there remain needs which are unmet. The question raised is whether these proposed rules properly address those unmet needs.

After giving the proposed rule changes a great deal of consideration I am obliged to oppose them. In my opinion, the existing Rules already accomplish all that the groups proposing these changes seek. The proposals, in my view, create a group of clients who, almost by definition, are going to receive limited and potentially sub-standard legal representation. By adopting the proposed rules, this Court will be approving a form of "drive through" legal services. While this may be acceptable in the business of fast food restaurants, it is not acceptable to the practice of Law as I understand it. Thus, rather than providing undivided loyalty and competent service, lawyers will be allowed (perhaps even encouraged) to have no meaningful professional relationship with clients, but rather to present a menu of options to clients, have them select from the menu, and deliver the service with few questions asked. The fact is that prospective clients may have no idea of what choices to make.

Lawyers not only provide legal advice, they also counsel their clients. In the best sense, if we use the Atticus Finch model of an attorney, the lawyer has the privilege of coming to know his client well enough that he can counsel that client wisely.

In the brave new world of limited scope representation, lawyers will become something similar to factory workers who only need to know which bolt to tighten. This is not the profession I chose to enter 40 years ago.

I am also troubled by the notion that the "equal access to Justice community" is being guided by "national experts" from

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California. While such proponents may have entirely laudable goals, I am concerned that LSR is being suggested under the guise of helping (primarily) the disadvantaged, but in reality may become a marketing ploy for attorneys who are unable or don't want to provide the kind of representation envisioned by the Preamble to the Rules of Professional Conduct.

Thank you for considering these comments.

Respectfully,


Michael G. Alterowitz

PC: Justices Patricia Cotter,
W. William Leaphart,
Brian Morris,
James C. Nelson,
Jim Rice,
Michael E. Wheat